

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34298

STATE OF IDAHO,)	2008 Unpublished Opinion No. 564
)	
Plaintiff-Respondent,)	Filed: July 29, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
PHILIP WARREN,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. John K. Butler, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Philip Warren was charged with possession of methamphetamine with intent to deliver and it was also alleged that he was a persistent violator. Pursuant to a binding Idaho Criminal Rule 11 plea agreement, Warren entered an *Alford*¹ plea to possession of methamphetamine with intent to deliver, I.C. § 37-2732(a), and the state agreed to dismiss the persistent violator enhancement and to recommend a unified sentence of seventeen years, with six years determinate, to run concurrently with Warren's sentence in a separate case. As part of the plea agreement, Warren waived his rights to appeal his conviction and sentence. The district court imposed the state's recommended sentence. Warren filed a *pro se* Idaho Criminal Rule 35 motion for reduction of sentence and a motion for appointment of counsel for the Rule 35 motion. The district court denied both motions. Warren appeals, contending that the district

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

court abused its discretion by denying his request for appointment of counsel and by denying his Rule 35 motion.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Pursuant to I.C. § 19-852(b)(3), the district court must appoint counsel to represent an indigent defendant in a Rule 35 proceeding unless the court finds that the motion filed is frivolous. *State v. Wade*, 125 Idaho 522, 525, 873 P.2d 167, 170 (Ct. App. 1994). “A determination of whether a motion for reduction of sentence is frivolous for purposes of applying I.C. § 19-582(b)(3) is based upon the contents of the motion itself and any accompanying documentation that may support the motion. The issue thus presented is one of law which we freely review.” *Id.*

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by denying Warren’s request for appointment of counsel and by denying his Rule 35 motion for reduction of sentence. Accordingly, the order of the district court denying Warren’s Rule 35 motion is affirmed.